

STATE OF HAWAII
REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS '04 APR 19 A9:23

TO: Chief Procurement Officer
FROM: Attorney General
(Department/Division Agency)

STATE PROCUREMENT OFFICE
STATE OF HAWAII

Pursuant to § 103D-102(b)(5), HRS, and Chapter 3-120, HAR, the Department requests a procurement exemption to purchase the following:

Description of goods, services, or construction: Legal Services as Bond Counsel in connection with the issuance, sale and delivery of approximately \$128,000,000 in Housing and Community Development Corporation of Hawaii Refunding Rental Housing System and State of Hawaii Affordable Rental Housing Program Bonds ("Bonds"), including advising the State of Hawaii with respect to its rights, duties and obligations in connection with the transaction; requirements of the Internal Revenue Code; exemption from federal taxation of interest on the bonds; and related matters.

Vendor:
Samuel I. Hellman, Esq.

Cost:
Fixed fee of \$125,000 including out-of-pocket expenses.

Term of Contract:
From: Upon CPO Approval
To: December 31, 2004

Explaining describing how procurement by competitive means is either not practicable or not advantageous to the State: Mr. Hellman and his firm are nationally recognized bond counsel. National recognition of bond counsel expertise is important because the recognition means that the individual and his or her firm have the requisite breadth and depth of knowledge and expertise in the area and have substantial backup and resources to respond to the kinds of issues that would arise in complicated bond transactions. Mr. Hellman served as bond counsel in connection with establishing both the Rental Housing System and the Affordable Rental Housing Program for bond financing purposes. Because of his prior experience with similar transactions and with the Housing and Community Development Corporation of Hawaii and its predecessors in this specific area, Mr. Hellman is well versed in the kinds of issues that arise in financings of this type, is familiar with how the State and the Housing and Community Development Corporation of Hawaii operate, and has been efficient and effective in representing the State's interests. There are only a few local bond counsel (and only two are nationally recognized), but none of them have ever been engaged by the State to serve as bond counsel on the type of transaction involved here. They do not have the requisite expertise or the backup to do a complicated transaction, like this one, that may involve combining the Rental Housing System with the Affordable Housing program. Consequently, hiring local counsel for this transaction would not be practicable or advantageous to the State. In 2003, the Legislature amended Hawaii Revised Statutes, chapter 103D, the State Procurement Code. (See, Act 52, SLH 2003) While Mr. Hellman's firm could obtain a certificate of good standing from its home state, and could conceivably establish a local office, if that were required, the local office could not perform the services required by the contract unless it is staffed by someone who is licensed to practice law in Hawaii. The statute, together with the personal nature of the services, would require Mr. Hellman himself to apply for, take, and pass the Hawaii bar examination and become licensed to practice law in Hawaii. Becoming licensed to practice law in Hawaii is costly and time consuming. Moreover, because the bar exam is given only twice a year, it is impractical to require nationally recognized bond counsel to be licensed in Hawaii. Not only would the local staff have to be licensed to practice law in Hawaii, but also they would have to have bond counsel expertise and experience. As stated above, there are only two firms in Hawaii that have some national recognition as bond counsel, but hiring these firms would not be practicable or advantageous to the State because to do so when more experienced bond counsel is available would be contrary to the purposes and goals of the State Procurement Code, that is, to foster broad-based and full and open competition. (Act 8, Special Session Laws of Hawaii 1993).

Mr. Hellman is included in the Department's list of pre-qualified attorneys for bond counsel services. Moreover, the selection of bond counsel for this transaction was conducted in accordance with the requirements of HRS § 103D-304 as far as practicable. However, because of the requirements of HRS § 103D-310 an exemption is required, particularly from the requirements of HRS § 103D-310(c) (except for the tax clearance certificate).

Because of the specialized nature of bond counsel services and the need to obtain services from nationally recognized bond counsel, and because of Mr. Hellman's past experience, it would not be practicable or advantageous to the State to obtain those services competitively.

Details of the process or procedure to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:

Due to the highly specialized nature of the work required, and his past experience of successfully performing such work for the State, the Attorney General and the Department of Budget and Finance and the Housing and Community Development Corporation of Hawaii (the using agency) would like to retain Mr. Hellman for this project over other nationally recognized bond counsel.

A description of the agency's internal controls and approval requirements for the exemption procurement:

The contract for legal services will be conducted under the supervision of the Attorney General and subject to his final approval.

A list of agency personnel, by position title, who will be involved in the approval process and administration of the contract:

Attorney General

Direct questions to:

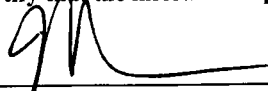
Mark J. Bennett, Attorney General

Phone Number:

(808) 586-1500

This exemption should be considered for list of exemptions attached to Chapter 3-120, HAR: Yes: ☒ No: ☐

I certify that the information provided above is to the best of my knowledge, true and correct.



Department/Agency Head

APR 15 2004

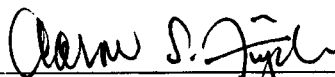
Date

Chief Procurement Officer's Comments:

Please ensure adherence to applicable administrative requirements.

☒ Approved

☐ Denied



Chief Procurement Officer

April 28, 2004

Date

cc: Administrator
State Procurement

<p>The Chief Procurement Officer is in the process of reviewing the request from the Department of <u>Attorney General</u> for exemption from Chapter 103D, HRS, for the following goods, services, or construction:</p>			
<p>Bond Counsel in connection with the issuance of approximately \$128,000,000 Housing and Community Development Corporation of Hawaii Refunding Rental Housing System and State of Hawaii Affordable Rental Housing Program Bonds.</p>			
<p>Vendor: Samuel I. Hellman, Esq.</p>			
<p>Address: Hawkins, Delafield & Wood, LLP 67 Wall Street New York, New York 10005</p>			
Term of Contract:	From: Date of CPO Approval	To: December 31, 2004	Cost: \$128,000, including out-of-pocket costs
Direct any inquiries to:			
Department: Attorney General		Phone Number: 586-0618	
Contact Name/Title: Diane Erickson		Fax Number: 586-1372	
Address: 425 Queen Street Honolulu, Hawaii 96813			

Date Notice Posted: April 19, 2004

A copy of this notice of exemption from Chapter 103D, HRS, shall be posted by the Chief Procurement Officer and the purchasing agency in an area accessible to the public, at least seven (7) calendar days from the date this notice was posted to:

Chief Procurement Officer
Office/Agency _____
Address _____

PE-04-33-M